

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 16

Introduced by White, 8.

Read first time January 8, 2009

Committee: Executive Board of the Legislative Council

A BILL

1 FOR AN ACT relating to the Legislature; to amend section 77-27,119,
2 Revised Statutes Cumulative Supplement, 2008; to adopt
3 the Taxpayers Transparency Act; to change confidentiality
4 provisions; and to repeal the original section.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) This section shall be known and may be
2 cited as the Taxpayer Transparency Act.

3 (2) By January 1, 2010, the Legislature shall provide a
4 single, searchable web site accessible by the public at no cost to
5 access, that includes for each expenditure of state funds:

6 (a) The name and principal location or residence of the
7 entity and recipients of the state funds;

8 (b) The amount of state funds expended;

9 (c) The type of transaction;

10 (d) The funding or expending agency;

11 (e) The budget program source;

12 (f) A descriptive purpose of the funding action or
13 expenditure; and

14 (g) Other relevant information.

15 The web site shall include data for fiscal year 2008-09
16 and each fiscal year thereafter. The data shall be available on the
17 web site no later than thirty days after the end of the preceding
18 fiscal year.

19 (3) The State Treasurer, the Tax Commissioner, and all
20 state agencies shall provide to the Legislature such information as
21 is necessary to accomplish the purposes of the act.

22 (4) Nothing in the act requires the disclosure of
23 information which is considered confidential by state or federal
24 law.

25 (5) For purposes of this section, expenditure of state

1 funds means all expenditures of appropriated or nonappropriated
2 funds by a state entity from the state treasury in forms including,
3 but not limited to:
4 (a) Grants;
5 (b) Contracts;
6 (c) Subcontracts; and
7 (d) Tax refunds or credits, excluding those which result
8 from the overpayment of income tax, but including refunds and
9 credits used under agreements entered into on or after the
10 effective date of this act under the Nebraska Advantage Act,
11 the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska
12 Advantage Research and Development Act, or the Nebraska Advantage
13 Rural Development Act.

14 Expenditure of state funds does not include the transfer
15 of funds between two state agencies or payments of state or federal
16 assistance to an individual.

17 Sec. 2. Section 77-27,119, Revised Statutes Cumulative
18 Supplement, 2008, is amended to read:

19 77-27,119 (1) The Tax Commissioner shall administer and
20 enforce the income tax imposed by sections 77-2714 to 77-27,135,
21 and he or she is authorized to conduct hearings, to adopt and
22 promulgate such rules and regulations, and to require such facts
23 and information to be reported as he or she may deem necessary to
24 enforce the income tax provisions of such sections, except that
25 such rules, regulations, and reports shall not be inconsistent with

1 the laws of this state or the laws of the United States. The Tax
2 Commissioner may for enforcement and administrative purposes divide
3 the state into a reasonable number of districts in which branch
4 offices may be maintained.

5 (2) (a) The Tax Commissioner may prescribe the form and
6 contents of any return or other document required to be filed under
7 the income tax provisions. Such return or other document shall
8 be compatible as to form and content with the return or document
9 required by the laws of the United States. The form shall have a
10 place where the taxpayer shall designate the high school district
11 in which he or she lives and the county in which the high school
12 district is headquartered. The Tax Commissioner shall adopt and
13 promulgate such rules and regulations as may be necessary to insure
14 compliance with this requirement.

15 (b) The State Department of Education, with the
16 assistance and cooperation of the Department of Revenue, shall
17 develop a uniform system for numbering all school districts in the
18 state. Such system shall be consistent with the data processing
19 needs of the Department of Revenue and shall be used for the
20 school district identification required by subdivision (a) of this
21 subsection.

22 (c) The proper filing of an income tax return shall
23 consist of the submission of such form as prescribed by the
24 Tax Commissioner or an exact facsimile thereof with sufficient
25 information provided by the taxpayer on the face of the form from

1 which to compute the actual tax liability. Each taxpayer shall
2 include such taxpayer's correct social security number or state
3 identification number and the school district identification number
4 of the school district in which the taxpayer resides on the face of
5 the form. A filing is deemed to occur when the required information
6 is provided.

7 (3) The Tax Commissioner, for the purpose of ascertaining
8 the correctness of any return or other document required to
9 be filed under the income tax provisions, for the purpose of
10 determining corporate income, individual income, and withholding
11 tax due, or for the purpose of making an estimate of taxable income
12 of any person, shall have the power to examine or to cause to have
13 examined, by any agent or representative designated by him or her
14 for that purpose, any books, papers, records, or memoranda bearing
15 upon such matters and may by summons require the attendance of
16 the person responsible for rendering such return or other document
17 or remitting any tax, or any officer or employee of such person,
18 or the attendance of any other person having knowledge in the
19 premises, and may take testimony and require proof material for his
20 or her information, with power to administer oaths or affirmations
21 to such person or persons.

22 (4) The time and place of examination pursuant to this
23 section shall be such time and place as may be fixed by the Tax
24 Commissioner and as are reasonable under the circumstances. In the
25 case of a summons, the date fixed for appearance before the Tax

1 Commissioner shall not be less than twenty days from the time of
2 service of the summons.

3 (5) No taxpayer shall be subjected to unreasonable or
4 unnecessary examinations or investigations.

5 (6) Except in accordance with proper judicial order or
6 as otherwise provided by law, it shall be unlawful for the Tax
7 Commissioner, any officer or employee of the Tax Commissioner,
8 any person engaged or retained by the Tax Commissioner on an
9 independent contract basis, any person who pursuant to this section
10 is permitted to inspect any report or return or to whom a copy, an
11 abstract, or a portion of any report or return is furnished, any
12 employee of the State Treasurer or the Department of Administrative
13 Services, or any other person to divulge, make known, or use in
14 any manner the amount of income or any particulars set forth or
15 disclosed in any report or return required except for the purpose
16 of enforcing sections 77-2714 to 77-27,135. The officers charged
17 with the custody of such reports and returns shall not be required
18 to produce any of them or evidence of anything contained in them
19 in any action or proceeding in any court, except on behalf of the
20 Tax Commissioner in an action or proceeding under the provisions
21 of the tax law to which he or she is a party or on behalf of
22 any party to any action or proceeding under such sections when the
23 reports or facts shown thereby are directly involved in such action
24 or proceeding, in either of which events the court may require the
25 production of, and may admit in evidence, so much of such reports

1 or of the facts shown thereby as are pertinent to the action or
2 proceeding and no more. Nothing in this section shall be construed
3 (a) to prohibit the delivery to a taxpayer, his or her duly
4 authorized representative, or his or her successors, receivers,
5 trustees, personal representatives, administrators, assignees, or
6 guarantors, if directly interested, of a certified copy of any
7 return or report in connection with his or her tax, (b) to
8 prohibit the publication of statistics so classified as to prevent
9 the identification of particular reports or returns and the items
10 thereof, (c) to prohibit the inspection by the Attorney General,
11 other legal representatives of the state, or a county attorney
12 of the report or return of any taxpayer who brings an action to
13 review the tax based thereon, against whom an action or proceeding
14 for collection of tax has been instituted, or against whom an
15 action, proceeding, or prosecution for failure to comply with the
16 Nebraska Revenue Act of 1967 is being considered or has been
17 commenced, (d) to prohibit furnishing to the Nebraska Workers'
18 Compensation Court the names, addresses, and identification numbers
19 of employers, and such information shall be furnished on request
20 of the court, (e) to prohibit the disclosure of information
21 and records to a collection agency contracting with the Tax
22 Commissioner pursuant to sections 77-377.01 to 77-377.04, (f)
23 to prohibit the disclosure of information pursuant to section
24 77-27,195, 77-4110, or 77-5731, (g) to prohibit the disclosure
25 to the Public Employees Retirement Board of the addresses of

1 individuals who are members of the retirement systems administered
2 by the board, and such information shall be furnished to the
3 board solely for purposes of its administration of the retirement
4 systems upon written request, which request shall include the name
5 and social security number of each individual for whom an address
6 is requested, (h) to prohibit the disclosure to the Department
7 of Labor of tax return information pertaining to individuals,
8 corporations, and businesses determined by the Department of Labor
9 to be delinquent in the payment of combined tax or in the repayment
10 of benefit overpayments, and such disclosure shall be strictly
11 limited to information necessary for the administration of the
12 Employment Security Law, (i) to prohibit the disclosure to the
13 Department of Motor Vehicles of tax return information pertaining
14 to individuals, corporations, and businesses determined by the
15 Department of Motor Vehicles to be delinquent in the payment of
16 amounts due under agreements pursuant to the International Fuel
17 Tax Agreement Act, and such disclosure shall be strictly limited
18 to information necessary for the administration of the act, ~~or~~ (j)
19 to prohibit the disclosure under section 42-358.08, 43-512.06, or
20 43-3327 to any court-appointed individuals, the county attorney,
21 any authorized attorney, or the Department of Health and Human
22 Services of an absent parent's address, social security number,
23 amount of income, health insurance information, and employer's
24 name and address for the exclusive purpose of establishing and
25 collecting child, spousal, or medical support, or (k) to prohibit

1 the disclosure of information required by the Taxpayer Transparency
2 Act. Information so obtained shall be used for no other purpose.
3 Any person who violates this subsection shall be guilty of a
4 felony and shall upon conviction thereof be fined not less than
5 one hundred dollars nor more than five hundred dollars, or be
6 imprisoned not more than five years, or be both so fined and
7 imprisoned, in the discretion of the court and shall be assessed
8 the costs of prosecution. If the offender is an officer or employee
9 of the state, he or she shall be dismissed from office and be
10 ineligible to hold any public office in this state for a period of
11 two years thereafter.

12 (7) Reports and returns required to be filed under income
13 tax provisions of sections 77-2714 to 77-27,135 shall be preserved
14 until the Tax Commissioner orders them to be destroyed.

15 (8) Notwithstanding the provisions of subsection (6) of
16 this section, the Tax Commissioner may permit the Secretary of the
17 Treasury of the United States or his or her delegates or the proper
18 officer of any state imposing an income tax, or the authorized
19 representative of either such officer, to inspect the income tax
20 returns of any taxpayer or may furnish to such officer or his or
21 her authorized representative an abstract of the return of income
22 of any taxpayer or supply him or her with information concerning an
23 item of income contained in any return or disclosed by the report
24 of any investigation of the income or return of income of any
25 taxpayer, but such permission shall be granted only if the statutes

1 of the United States or of such other state, as the case may be,
2 grant substantially similar privileges to the Tax Commissioner of
3 this state as the officer charged with the administration of the
4 income tax imposed by sections 77-2714 to 77-27,135.

5 (9) Notwithstanding the provisions of subsection (6) of
6 this section, the Tax Commissioner may permit the Postal Inspector
7 of the United States Postal Service or his or her delegates to
8 inspect the reports or returns of any person filed pursuant to the
9 Nebraska Revenue Act of 1967 when information on the reports or
10 returns is relevant to any action or proceeding instituted or being
11 considered by the United States Postal Service against such person
12 for the fraudulent use of the mails to carry and deliver false and
13 fraudulent tax returns to the Tax Commissioner with the intent to
14 defraud the State of Nebraska or to evade the payment of Nebraska
15 state taxes.

16 (10)(a) Notwithstanding the provisions of subsection (6)
17 of this section, the Tax Commissioner shall, upon written request
18 by the Auditor of Public Accounts or the Legislative Performance
19 Audit Committee, make tax returns and tax return information
20 open to inspection by or disclosure to officers and employees
21 of the Auditor of Public Accounts or Legislative Performance
22 Audit Section employees for the purpose of and to the extent
23 necessary in making an audit of the Department of Revenue pursuant
24 to section 50-1205 or 84-304. The Auditor of Public Accounts
25 or Legislative Performance Audit Section shall statistically and

1 randomly select the tax returns and tax return information to
2 be audited based upon a computer tape provided by the Department
3 of Revenue which contains only total population documents without
4 specific identification of taxpayers. The Tax Commissioner shall
5 have the authority to approve the statistical sampling method used
6 by the Auditor of Public Accounts or Legislative Performance Audit
7 Section. Confidential tax returns and tax return information shall
8 be audited only upon the premises of the Department of Revenue.
9 All audit workpapers pertaining to the audit of the Department of
10 Revenue shall be stored in a secure place in the Department of
11 Revenue.

12 (b) No officer or employee of the Auditor of Public
13 Accounts or Legislative Performance Audit Section employee shall
14 disclose to any person, other than another officer or employee of
15 the Auditor of Public Accounts or Legislative Performance Audit
16 Section employee whose official duties require such disclosure or
17 as provided in subsections (2) and (3) of section 50-1213, any
18 return or return information described in the Nebraska Revenue
19 Act of 1967 in a form which can be associated with or otherwise
20 identify, directly or indirectly, a particular taxpayer.

21 (c) Any person who violates the provisions of this
22 subsection shall be guilty of a Class IV felony and, in the
23 discretion of the court, may be assessed the costs of prosecution.
24 The guilty officer or employee shall be dismissed from employment
25 and be ineligible to hold any position of employment with the State

1 of Nebraska for a period of two years thereafter. For purposes of
2 this subsection, officer or employee shall include a former officer
3 or employee of the Auditor of Public Accounts or former Legislative
4 Performance Audit Section employee.

5 (11) For purposes of subsections (10) through (13) of
6 this section:

7 (a) Tax returns shall mean any tax or information return
8 or claim for refund required by, provided for, or permitted
9 under sections 77-2714 to 77-27,135 which is filed with the Tax
10 Commissioner by, on behalf of, or with respect to any person
11 and any amendment or supplement thereto, including supporting
12 schedules, attachments, or lists which are supplemental to or part
13 of the filed return;

14 (b) Return information shall mean:

15 (i) A taxpayer's identification number and (A) the
16 nature, source, or amount of his or her income, payments, receipts,
17 deductions, exemptions, credits, assets, liabilities, net worth,
18 tax liability, tax withheld, deficiencies, overassessments, or tax
19 payments, whether the taxpayer's return was, is being, or will be
20 examined or subject to other investigation or processing or (B) any
21 other data received by, recorded by, prepared by, furnished to, or
22 collected by the Tax Commissioner with respect to a return or the
23 determination of the existence or possible existence of liability
24 or the amount of liability of any person for any tax, penalty,
25 interest, fine, forfeiture, or other imposition or offense; and

1 (ii) Any part of any written determination or any
2 background file document relating to such written determination;
3 and

4 (c) Disclosures shall mean the making known to any person
5 in any manner a return or return information.

6 (12) The Auditor of Public Accounts or the Legislative
7 Auditor of the Legislative Performance Audit Section shall (a)
8 notify the Tax Commissioner in writing thirty days prior to the
9 beginning of an audit of his or her intent to conduct an audit, (b)
10 provide an audit plan, and (c) provide a list of the tax returns
11 and tax return information identified for inspection during the
12 audit.

13 (13) The Auditor of Public Accounts or the Legislative
14 Performance Audit Section shall, as a condition for receiving tax
15 returns and tax return information: (a) Subject employees involved
16 in the audit to the same confidential information safeguards
17 and disclosure procedures as required of Department of Revenue
18 employees; (b) establish and maintain a permanent system of
19 standardized records with respect to any request for tax returns
20 or tax return information, the reason for such request, and the
21 date of such request and any disclosure of the tax return or
22 tax return information; (c) establish and maintain a secure area
23 or place in the Department of Revenue in which the tax returns,
24 tax return information, or audit workpapers shall be stored; (d)
25 restrict access to the tax returns or tax return information only

1 to persons whose duties or responsibilities require access; (e)
2 provide such other safeguards as the Tax Commissioner determines
3 to be necessary or appropriate to protect the confidentiality of
4 the tax returns or tax return information; (f) provide a report
5 to the Tax Commissioner which describes the procedures established
6 and utilized by the Auditor of Public Accounts or Legislative
7 Performance Audit Section for insuring the confidentiality of tax
8 returns, tax return information, and audit workpapers; and (g) upon
9 completion of use of such returns or tax return information, return
10 to the Tax Commissioner such returns or tax return information,
11 along with any copies.

12 (14) The Tax Commissioner may permit other tax officials
13 of this state to inspect the tax returns and reports filed
14 under sections 77-2714 to 77-27,135, but such inspection shall be
15 permitted only for purposes of enforcing a tax law and only to
16 the extent and under the conditions prescribed by the rules and
17 regulations of the Tax Commissioner.

18 (15) The Tax Commissioner shall compile the school
19 district information required by subsection (2) of this section.
20 Insofar as it is possible, such compilation shall include, but
21 not be limited to, the total adjusted gross income of each school
22 district in the state. The Tax Commissioner shall adopt and
23 promulgate such rules and regulations as may be necessary to insure
24 that such compilation does not violate the confidentiality of any
25 individual income tax return nor conflict with any other provisions

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1 of state or federal law.

2 Sec. 3. Original section 77-27,119, Revised Statutes

3 Cumulative Supplement, 2008, is repealed.